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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

13
14 The NVIDIA GPU LITIGATION

15 Case No. C 08-04312 JW

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**DECLARATION OF JUSTIN M.
LICHTERMAN IN SUPPORT OF
MOTION FOR FINAL APPROVAL
OF SETTLEMENT**

Date: December 20, 2010
Time: 9:00 a.m.
Courtroom: 8, 4th Floor
Judge: Honorable James Ware

1 I, Justin Myer Lichterman, hereby declare as follows:

2 1. I am an attorney with the law firm Orrick, Herrington & Sutcliffe LLP, counsel of
3 record for NVIDIA Corporation (“NVIDIA”) in the above-captioned action. I submit this
4 declaration in support of the Motion for Final Approval of the Settlement. I have personal
5 knowledge of the matters set forth herein, and, if called upon, I could and would competently
6 testify thereto.

7 2. Attached as **Exhibit A** is a true and correct copy of Apple Inc.’s Repair Extension
8 Program, which states in part: “Apple is issuing refunds to customers who may have paid for
9 repairs related to this issue. Please contact Apple for details on the refund process.” The Repair
10 Extension Program was previously authenticated in the Declaration of Charlotte Wheelock, which
11 was filed in support of NVIDIA’s Opposition to Plaintiff’s Motion for Class Certification in the
12 above-captioned matter at Docket No. 190 on May 4, 2010. The Court should take judicial notice
13 of this document pursuant to Federal Rule of Evidence 201(d) and *In re Copper Mountain Secs.*
14 *Litig.*, 311 F. Supp. 2d 857, 864 (N.D. Cal. 2004) (court may take judicial notice of its own files).

15 3. Attached as **Exhibit B** is a true and correct copy of the Second Amended
16 Complaint in *Nygren v. Hewlett-Packard Co.*, No. 07-05793 (JW) (N.D. Cal.) (Ware, J.), which is
17 also available online at Docket No. 63 in that case. The Court should take judicial notice of this
18 document pursuant to Federal Rule of Evidence 201(d). *See Reyn’s Pasta Bella, LLC v. Visa*
19 *USA, Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (taking judicial notice of briefs filed in another
20 court); *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th
21 Cir. 1998) (court may take judicial notice of the existence and content of court files in another
22 court);.

23 4. Attached as **Exhibit C** is a true and correct copy of the Order Granting
24 Defendant’s Motion for Summary Judgment; Denying as Moot Plaintiffs’ Motion for Class
25 Certification and Defendant’s Motions to Strike in *Nygren v. Hewlett-Packard Co.*, No. 07-05793
26 (JW) (N.D. Cal.) (Ware, J.). The Order is also available online at Docket No. 260 in the *Nygren*
27 case. The Court should take judicial notice of this document pursuant to Federal Rule of
28 Evidence 201(d).

1 5. Attached as **Exhibit D** is a true and correct copy of the Declaration of Richard
 2 Hunt Hodge, which was previously filed in support of Hewlett-Packard Company's ("HP")
 3 Opposition to plaintiffs' Motion for Class Certification in *Nygren v. Hewlett-Packard Co.*, No.
 4 07-05793 (JW) (N.D. Cal.) (Ware, J.). The Hodge declaration is also available online at Docket
 5 No. 239 in the *Nygren* case. The Court should take judicial notice of this document pursuant to
 6 Federal Rule of Evidence 201(d).

7 6. Attached as **Exhibit E** is a true and correct copy of the Complaint in *Perron v.*
 8 *Hewlett-Packard Co.*, No. 10-00695 (LHK) (N.D. Cal.), which is also available online at Docket
 9 No. 1 in the *Perron* case. The Court should take judicial notice of this document pursuant to
 10 Federal Rule of Evidence 201(d).

11 7. Attached as **Exhibit F** is a true and correct copy of the Stipulation and Order to
 12 Stay Litigation in *Perron v. Hewlett-Packard Co.*, No. 10-00695 (LHK) (N.D. Cal.), which is also
 13 available online at Docket No. 41 in the *Perron* case. The Court should take judicial notice of
 14 this document pursuant to Federal Rule of Evidence 201(d).

15 8. Attached as **Exhibit G** is a true and correct copy of NVIDIA's Form 8-K for the
 16 period ending July 2, 2008 and filed with the SEC on July 2, 2008. The Court should take
 17 judicial notice of this document pursuant to Federal Rule of Evidence 201(d), and *In re Vantive*
 18 *Corp. Sec. Litig.*, 110 F. Supp. 2d 1209, 1213 n.8 (N.D. Cal. 2000), *aff'd*, 283 F.3d 1079 (9th Cir.
 19 2002) (finding SEC documents properly subject to judicial review where their authenticity is not
 20 disputes and their accuracy cannot reasonably be questioned).

21 9. On December 6, 2010, I visited the NVIDIA settlement website located at
 22 www.NVIDIASettlement.com and clicked on the "Check Models" tab on the left-hand side of the
 23 screen. On the next screen, I checked the box marked "HP" and then clicked "Continue." On the
 24 following screen, I selected the "HP Pavilion dv21xx" model from the drop down menu of
 25 Platform or Model, and clicked "Next Step." Next, I selected the option for "If the screen on your
 26 HP-Compaq notebook computer is NOT working after you plug in your computer and turn it on,
 27 please choose this option." and again clicked "Next Step." There, I found and printed a webpage
 28 titled "Check Your Model." A true and correct copy is attached hereto as **Exhibit H**. I then

1 clicked on the icon that read “How do I find my Product Identification Number?” and a new
2 screen popped up that displayed a picture of where I could find my Product Identification Number
3 on my HP computer tag. A true and correct copy of a snapshot of the pop-up screen is attached
4 hereto as **Exhibit H**.

5 10. On December 6, 2010, I visited the NVIDIA settlement website located at
6 www.NVIDIASettlement.com and clicked “Check Models” on the left-hand side of the screen. I
7 then selected “Dell,” and then “Latitude D630” as my Model Number. Next, I selected the option
8 for “If the screen on your Dell notebook computer is NOT working after you plug in your
9 computer and turn it on, please choose this option.” There, I found and printed a webpage titled
10 “Check Your Model.” A true and correct copy is attached hereto as **Exhibit I**. I then clicked on
11 the icon that read “Where do I find my service tag number?” which directed me to a pop-up
12 screen. A true and correct copy of a snapshot of the pop-up screen is attached hereto as **Exhibit**
13 **I**.

14 11. On December 6, 2010, I visited the NVIDIA settlement website located at
15 www.NVIDIASettlement.com and clicked “Check Models” on the left-hand side of the screen. I
16 then selected “Apple,” and then “MacBook Pro (17-inch)” as my Model Number. Next, I
17 selected the option for “If the screen on your Apple notebook computer is NOT working after
18 you plug in your computer and turn it on, please choose this option.” There, I found and printed a
19 webpage titled “Check Your Model.” A true and correct copy is attached hereto as **Exhibit J**. I
20 then clicked on the icon that read “Where do I find my Serial Number?” which directed me to a
21 pop-up screen. A true and correct copy of a snapshot of the pop-up screen is attached hereto as
22 **Exhibit J**.

23 12. I have been actively involved in NVIDIA’s efforts to research, select and obtain
24 replacement computers for Class Members who own a Hewlett-Packard (“HP”) computer system
25 and whose claims are approved by the administrator. In light of the passage of time and
26 technological advances, the new systems are expected to have similar or better performance than
27 the Class Computers, albeit at a lower cost. HP has helped NVIDIA to identify suitable
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1 replacement systems and is likely to help supply NVIDIA with many replacement computers at
2 NVIDIA's cost.

3 13. I was involved in obtaining manufacturing and shipping data for the chips that
4 were incorporated into Class Computers. The data were obtained from NVIDIA, its Original
5 Equipment Manufacturers, and their Original Device Manufacturers, and provided to Interim
6 Lead Counsel during settlement discussions. After hard-bargaining by Plaintiffs, NVIDIA agreed
7 that the Settlement would cover Class Computers sold from the date that NVIDIA first started
8 shipping chips that were incorporated into those computer models until several months after
9 NVIDIA stopped shipping those chips, to ensure that the date range included a sufficient
10 "cushion" period, and would capture computers that had chips with the material set at issue in the
11 litigation. The date ranges specified in the settlement agreement are over-inclusive.

12 14. I was involved in discussions and negotiations with the OEMs regarding
13 implementing the settlement. After the class certification hearing held in this case, I learned for
14 the first time from the OEMs that they often sold different versions of the same computer models,
15 some of which contained NVIDIA chips and some of which did not. I also learned that those
16 different versions were sold under the same name over the same time frame.

17 I declare under penalty of perjury that the foregoing is true and correct to the best of my
18 knowledge. Executed this 6th day of December, 2010, in San Francisco, California.

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/s/ Justin M. Lichterman

22 JUSTIN M. LICHTERMAN
23 Attorneys for Defendant
24 NVIDIA CORPORATION

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